IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 305 OF 1996

SHRI D. D. SHAH)
having address at 95/96)
Somwar Peth, Ramnarayan)
Niwas, Pune 411 011) .. PETITIONER

VERSUS

THE INSTITUTE OF)
CHARTERED ACCOUNTANTS)
OF INDIA, P.B. NO.7100)
Indraprastha Marg,)
New Delhi 140002.)

2. T.A. SWAMINATHAN)
residing at 15/22 P.A
Chambers, Pimpri,)
Pune 411 018) .. RESPONDENTS

Mr.A.V.Anturkar with Mr.S.B.Deshmukh for petitioner

Mr. Virag Tulzapurkar i/b M/s. Little & Co. for respondent 1

Ms. L.V. Pawar with Shri V.G.Mujumdar for respondent 2

CORAM:-SMT. RANJANA DESAI &

A.P. DESHPANDE, JJ.

DATED ON WHICH THE JUDGMENT RESERVED:-10TH AUGUST, 2006

DATED ON WHICH THE JUDGMENT DELIVERED:-14th AUGUST, 2006

JUDGMENTl:-(Per Smt. Ranjana Desai, J.)

. The petitioner is a Chartered Accountant. He is a tax consultant practising in Pune. Respondent 1

is the Institute of Chartered Accountants of India. Respondent 2 is a Senior Advocate practising in civil court at Pune.

2. In this petition filed under Article 226 of the Constitution of India the petitioner has prayed that respondent 1 may be directed to keep the complaint filed by respondent 2 against the petitioner being Complaint No. 25-CA(1)/95-1996 pending until the disposal of Special Civil Suit No. 220 of 1987 filed by the petitioner in the Court of the Civil Judge, Senior Division, Pune.

3. We must begin by giving gist of the facts as evident from the pleadings of the parties.

. In the year 1982 Shri Pantpratinidhi Raja of Aundh had appointed respondent 2 as his advocate to look after and conduct family partition suit filed against him in Civil Court, Pune being Special Suit No. 81 of 1973. Respondent 2 was also appointed to look after other legal matters of Shri Pantpratinidhi.

. In or about June/July 1983, Shri Pantpratinidhi informed respondent 2 that a sum of Rs.50,000/- has

been paid by him to the petitioner for the payment of taxes in or about March 1981 and that the petitioner had not given any idea as to whether that amount is actually paid by him to the Tax department or not. Shri Pantpratinidhi informed respondent 2 that the petitioner had not given any receipt for the said payment. He requested respondent 2 to find out what had happened to the said amount paid by him to the petitioner. Shri Pantpratinidhi also pointed out to respondent 2 letter dated 21/9/93 addressed by the Tax Recovery Officer, Pune to him. According to the 2nd respondent in that letter the fact that Rs.50,000/- were paid by Shri Pantpratinidhi to the petitioner was mentioned. The said letter called upon Shri Pantpratinidhi to furnish receipt for the said amount of Rs.50,000/- to tax recovery department.

. Respondent 2 approached the Swargate Police Station because it appeared to him that the dealings of the petitioner were not clear and straightforward. Shri Pantpratinidhi also lodged police complaint against the petitioner. On 13/3/84 the petitioner was called to the police station. He was questioned by P.I. More regarding the complaint filed by Shri Pantpratinidhi. It is

the case of respondent 2 that the petitioner admitted before the police that he had taken money and he promised to pay back the amount. Shri Pantpratinidhi received the amount and therefore, did not file any formal complaint, whereas according to the petitioner the amount was extorted from him.

. On 1/10/84, the petitioner filed a complaint against four persons which includes respondent 2 under Section 120-B, 384, 385, 211, 34 and 109 of the I.P.C. Process was issued against respondent 2. Respondent 2 challenged the order of issuance of process and on 22-2-93, this court quashed the process order.

. The petitioner filed Special Civil Suit No. 220 of 1987 for recovery of Rs.50,000/- against respondent 2, Shri Pantpratinidhi, and two others in the court of Civil Judge, Senior Division, Pune. The said suit is still pending.

. On 19/1/94 respondent 2 filed a complaint before the Council of the Institute of Chartered Accountants (1st respondent herein) alleging misconduct by the petitioner. On 18/7/97 the

Institute of Chartered Accountants issued show cause notice to the petitioner. On 29/8/95, the petitioner gave a reply to the show cause notice. An application for stay was given by the petitioner before the Council of the 1st respondent on 29/8/95 praying for stay of the matter so long as the Civil Suit filed by him is pending. The petitioner then filed the instant writ petition requesting that so long as the civil suit filed by him is pending hearing of the complaint filed by respondent 2 may be stayed.

. On 1/11/96 this court issued Rule on the petition and ad-interim relief in terms of prayer clause (b) was granted. Thus further proceedings of the complaint filed by respondent 2 which is pending before the Council of respondent 1 was stayed.

4. We have heard Mr. Anturkar, learned counsel for the petitioner at some length. Mr. Anturkar contended that in the complaint which is filed by respondent 2, there is a reference to the civil suit filed by the petitioner. It is stated that the said suit is false and vexatious. Whether the said suit is false and vexatious cannot be decided

by respondent 1. According to Mr. Anturkar the said question cannot be adjudicated upon by any authority much less the Council of respondent 1 so long as the petitioner's suit is pending. Therefore, ex facie the complaint pending before the 1st respondent cannot be proceeded with so long as the petitioner's suit is pending before the civil court.

5. The learned counsel contended that in view of Section 10 of the Code of Civil Procedure, the complaint pending before the Council of the 1st respondent must be stayed because the matter which is in issue in the civil suit is also directly and substantially in issue in the said complaint, and both the proceedings are between one and the same parties. The learned counsel placed reliance on the decision of the Supreme Court in **Patel Roadways Ltd. v. Birla Yamaha Ltd., (2000) 4 SCC 91** where the Supreme Court has observed that the term "suit" is a generic term which takes within its sweep all proceedings initiated by a party for realisation of a right vested in him under law. He submitted that, therefore, the complaint filed before the Council of the 1st respondent would also come within the ambit of the term "suit" as found in

Section 10 of the Code of Civil Procedure. The learned Counsel, therefore, submitted that this court should stay the complaint pending before the Council of 1st respondent.

6. Mr. Tulzapurkar, learned counsel for the 1st respondent submitted that the civil suit filed by the petitioner and the complaint filed by respondent 2 are two distinct proceedings. In the civil suit the petitioner has claimed a decree for a sum of Rs.50,000/-. The allegations made in the complaint are basically against defendant No. 1 Shri Pantpratinidhi. It is stated that Shri Pantpratinidhi extorted an amount of Rs.50,000/- from the petitioner. No doubt respondent 2 is made a party to that suit but it is merely stated that respondents 2 to 4 have conspired with defendant 1 i.e. Shri Pantpratinidhi to extort money from the petitioner. Mr. Tulzapurkar took us to the affidavit of respondent 2 where the issues framed by the learned Judge in the petitioner's suit are quoted. Mr. Tulzapurkar contended that the issues relate only to the plaintiffs claim of Rs.50,000/- together with interest and his claim for costs. He submitted that even if the civil court holds in favour of the petitioner, the alleged monetary

liability of Shri Pantpratinidhi, respondent 2 and others will be determined. The suit does not pertain to the professional misconduct of the petitioner.

7. Mr. Tulzapurkar contended that sofar as the complaint pending before the Council of the 1st respondent is concerned it only pertains to the alleged professional misconduct of the petitioner. The prayer in the complaint is that a necessary enquiry be held against the petitioner and appropriate disciplinary action may be taken against him. Mr. Tulzapurkar contended that the suit filed by the petitioner and the complaint filed by respondent 2 do not impinge upon each other. The object of the complaint is to hold the petitioner guilty of professional misconduct. Whereas the civil suit is restricted to the claim of the petitioner which is monetary in nature.

8. Mr. Tulzapurkar, relied on **Institute of Chartered Accountants of India v. M/s. Price Waterhouse & Anr., AIR 1998 SC 74** and contended that the object behind regulatory measures envisaged in Section 21 of the Chartered Accountants Act, 1949 and regulations made

thereunder, is to ensure maintenance of discipline or high standard of professional conduct. He submitted that, therefore, enquiry must be allowed to be conducted. Stay of enquiry will frustrate its object.

9. Mr. Tulzapurkar also relied on **South Bengal State Transport Corporation v. Sapan Kumar Mitra & Ors., (2006) 2 SCC 584** and **Kendriya Vidyalaya Sangathan & Ors. v. T. Srinivas AIR 2004 SC 4127**. He submitted that disciplinary proceedings and criminal trial are two different proceedings. The nature and scope of these two proceedings cannot be equated and merely because a criminal case is pending the departmental proceeding need not be stayed. He submitted that this principle would apply with equal force to the complaint pending before the Council of the 1st respondent also.

10. Mr. Tulzapurkar contended that Section 10 of the Civil Procedure Code has no application to the present case. He contended that the petitioner has not raised this ground in the writ petition. He submitted that in any case the judgment cited by Mr. Deshmukh has no application to the facts of

the present case. Mr. Tulzapurkar contended that no case is made out by the petitioner for stay of the complaint and hence the petition be dismissed. The learned counsel for respondent 2 adopted the submissions of Mr. Tulzapurkar.

11. We find force in Mr. Tulzapurkar's submissions. The averments of the plaint in Special Civil Suit No. 220 of 1987 filed by the petitioner, its prayers and the issues framed by the learned Judge make it clear that though there are some allegations that respondent 2 had conspired with Shri Pantpratinidhi and others to extort money from the petitioner the basic claim is for the sum of Rs.50,000/- together with interest and compensatory costs.

12. The complaint filed by the 2nd respondent before the Council of the 1st respondent on the other hand revolves round the professional misconduct of the petitioner. After setting out facts it is stated in the complaint that the petitioner is guilty of grave misconduct within the meaning of Section 22 of the Chartered Accountants Act, 1949 and his conduct comes within the meaning of the expression "Other misconduct". It is stated

that the respondent has not maintained required standards of integrity and he does not deserve to practice as a 'Chartered Accountant'. It is further stated that for the said misconduct his certificate of practice deserves to be revoked and cancelled. It is prayed that necessary enquiry be held against the petitioner and appropriate disciplinary action be taken against him.

13. There can be no doubt, therefore, that object of the civil suit filed by the petitioner and object of the complaint filed by respondent 2 are different. There is no question of one trenching upon the other.

14. In this connection, we may usefully refer to the judgment of the Supreme Court in **State of Rajasthan v. B. K. Meena & Ors. AIR 1997 SC 13** where the Supreme Court was considering the question of stay of departmental enquiry. The Supreme Court observed;

> "Moreover, 'advisability,' 'desirability,' or propriety, as the case may be, of staying the departmental enquiry has to be determined in each case

> taking into consideration all the facts and circumstances of the case. Stay of disciplinary proceedings cannot be, and should not be, a matter of course. All the relevant factors, for and against, should be weighed and a decision taken keeping in view the various principles laid down in the Supreme Court's decisions."

The Supreme Court clarified that only valid ground for stay of disciplinary proceedings would be whether defence of the employee in the criminal case may be prejudiced. But in such cases the charges must be grave and must involve complicated questions of law. Later judgments of the Supreme Court have adopted similar line of reasoning. In our opinion, same principles can be applied to the complaint filed by respondent 2. We have already held that the civil suit and the complaint are two distinct proceedings. Their object is different. Their substance is different. In any case there are no complicated questions involved in this case which would call for stay of the complaint.

15. We also feel that stay of the complaint would

defeat its purpose. In **Institute of Chartered Accountants case (supra)**, the Supreme Court was considering whether the Council of the 1st respondent could call second report from the Disciplinary Committee. While dealing with this question the Supreme Court touched upon the importance of maintenance of discipline. It was observed that the maintenance of discipline or professional or other conduct of the members or associate members is salutary and paramount to maintain public confidence in the members of the Institute and to inculcate sense of discipline and excellence in the performance of the functions of member of the Institute or the associate member.

. So far as the role of the Council of 1st respondent is concerned, the Supreme Court observed as under:

> "The Council is required to consider independently the explanation submitted by the member and the evidence adduced in the enquiry before the Disciplinary Committee and the report of the Disciplinary Committee. It provides an inbuilt mechanism under which the Council

> itself is required to examine the case of professional or other misconduct of a member of the Institute or associate member, taking the aid of the report submitted by the Disciplinary Committee, the evidence adduced before the Committee and the explanation offered by the delinquent member."

16. The above observation of the Supreme Court emphasises the need to maintain discipline amongst members of the 1st respondent and the duty of the Council to meticulously examine the allegations of professional or other misconduct of a member. This is done to maintain public confidence in the members of the 1st respondent. In the circumstances, considering the fact that the civil suit and the complaint do not impinge upon each other, in our opinion, it is neither necessary nor proper to stay the complaint.

17. Submission of Mr. Anturkar that the present case is covered by Section 10 of the Code of Civil Procedure is wholly misplaced and, therefore, judgment in **Patel Roadways case (supra)** is not applicable to this case.

18. In the circumstances aforestated, we find no substance in the petition. The petition will have to be dismissed. However, the court dealing with the civil suit of the petitioner and the Council of the 1st respondent should dispose of the civil suit and the complaint respectively, independently and without being influenced by any observations made by us in this judgment.

19. The petition is dismissed.

(SMT. RANJANA DESAI,J.)

(A.P. DESHPANDE, J.)